THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18986 of 1999

Dated:12.12.2007

Between:

Pullella Kasipathy and others.

...Petitioners

and

District Collector, East Godavari District at Kakinada,
and others.

...Respondents.

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.18986 of 1999

ORDER:

The land admeasuring Acs.60.66 cents in R.S.No.447 situated at T.Savaram, Hamlet of Gudimellanka Village of Mallikipuram Mandal in East Godavari District is owned by Pasarlapudi Satram. The petitioners are tenants of the said Charitable Institution. An extent of Acs.2.00, Ac.1.00, Acs.2.50 cents, Ac.1.75 cents and Ac.0.50 cents was allegedly in the leasehold of the petitioners, for which they were paying 4 bags of 75 kgs of paddy per acre per year. In 1998, the third respondent proposed to take up Comprehensive Protected Water Supply Scheme (CPWS scheme) for the Village. The second respondent sent proposals for acquisition – draft notification under Section 4(1) of the Land Acquisition Act, 1894 (the Act, for brevity), and draft declaration under Section 6 of the Act. The petitioners allege that as requested by the second respondent, they handed over possession of the land, which was in their occupation. They, thereafter, made several representations for initiating proceedings under the Act and for paying compensation. They issued a legal notice dated 14.07.1999, in response to which, the third respondent sent a reply denying the right of the petitioners to receive compensation. Hence, they filed the

instant Writ Petition seeking a writ of mandamus directing respondent No.1 to initiate proceedings under the Act, if not already initiated, and pay a proportionate compensation to them along with the fourth respondent – Choultry.

The fourth respondent, which is admittedly the owner of entire extent of the land filed a counter affidavit. The allegation of the petitioners that they are tenants is denied. It is specifically alleged that in the absence of any specific sanction of the Government for leasing out the land of the Choultry as per Section 75 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (the Endowments Act, for brevity), the petitioners cannot be treated as tenants and that they are encroachers. It is also alleged that the petitioners were never tenants and they have no right to claim compensation.

A detailed counter affidavit is filed by the second respondent. The averments in brief may be noticed. In 1998 it was proposed to construct a summer storage water tank for providing water to 35 villages in two Mandals i.e., Mallikipuram and Sakhinetipalli Mandals under CPWS Scheme. The proposals under the Act were sent and an extent of Acs.2.80 cents was taken over possession by the Panchayat Raj Department on 12.08.1998 to commence construction work with the written consent of the petitioners. On behalf of the fourth respondent, the Commissioner of Endowments gave consent, and requisition was sent for acquiring Acs.35.18 cents. As required under the Act an amount of Rs.64,80,500/- was deposited with the Land Acquisition Officer (LAO) for payment to the fourth respondent. In the meanwhile, as Acs.2.80 cents was taken possession, and an amount of Rs.7,00,000/- towards 80% of the advance compensation was paid to the Executive Officer of the fourth respondent. As the fourth respondent denied the status of the petitioners as tenants, they are not entitled for compensation. It is also averred that after approval of the draft notification and declaration, necessary proceedings will be initiated for passing the award.

Though the counter affidavits were served on the learned Counsel for the petitioners no reply affidavit is filed, and therefore, the counter averments stand unrebutted.

Learned Counsel for the petitioners vehemently contends that the third respondent took possession of the lands from the petitioners, and therefore, they cannot be treated as encroachers. Secondly, he

would urge that as laid down by the Supreme Court as well as this Court, the petitioners are entitled for 75% of apportionment to the amount of compensation. **Per contra**, the learned Assistant Government Pleader submits that after 2002 by reason of Section 82(1) of the Endowments Act, the lease, if any, stands cancelled and the lessee of the Charitable Institution has no right to claim compensation. Secondly, he submits that the alleged lease by the fourth respondent in favour of the petitioners is not supported by a prior sanction of the Government, and therefore, the lease is void. When the petitioners claim a right by void transaction, they are not persons interested to claim compensation.

There is no dispute in this case that the entire land of about Acs.66.00 belongs to the fourth respondent – Choultry. There is also no dispute that the alleged lease in favour of the petitioners was never sanctioned by the Government as required under Section 75 of the Endowments Act, and therefore, it is null and void. The petitioners' Counsel does not seriously dispute the same, especially having regard to the decision of the Supreme Court in **State of A.P. v. Nallamilli Rami Reddy**[1]. The learned Counsel, however, submits that the third respondent addressed a communication to the Executive Officer of the fourth respondent – Choultry admitting that the petitioners herein gave consent on 12.08.1998 to the second respondent accepting the relinquishment over the land admeasuring Acs.2.80 cents in Survey No.447 and that itself would show that the possession was with the petitioners for long time. Even if the petitioners were in possession prior to August 1998, still their claim for possession is misconceived.

A copy of the letter of the third respondent to the fourth respondent is annexed to the Writ Petition. It reads as below.

> The Revenue Divisional Officer, Amalapuram, in his reference No.B/4456/97, dt.6.7.1998, has submitted proposals to the Collector, East Godavari, Kakinada for acquisition of lands and to award the compensation of 02 lakhs to the Institution to be paid to Endowments Department.
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> Pending finalisation of Acquisition proceedings, Sri Pullela Kasipathi and others gave consent on 12.8.98 to the Land Acquisition Officer accepting his relinquishment over the land of Ac.2.80 cents covered by RS.No.447.
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> In the light of the above, in view of the urgency of the Matters, we are proceeding with the advance possession of the land of

> Ac.2.80 cents in RS.No.447 which is the part of the total land Acquisition proposals for construction of water treatment plants and water sumps. The total amount of compensation will be paid to the Institution, after finalisation of Acquisition proceedings.

A reading of the above would show that the petitioners relinquished their rights over Acs.2.80 cents. The relinquishment spoken to by the third respondent in the above letter would certainly deny any right to the petitioners. Even if it is assumed that they were in possession of the land before 12.08.1998, unless such possession was authorized under Section 75 of the Endowments Act and the alleged lease, pursuant to which, they came into possession remains intact, they would not get any right. As noticed supra Section 82(1) of the Endowments Act renders all the agricultural leases by the Charitable and Religious Institutions as cancelled. When the lease itself is cancelled, the petitioners cannot get any right. The petitioners placed reliance on the decision of the Supreme Court in **Brij Behari Sahai v. State of Uttar Pradesh**[2] to submit that as the tenants they are entitled for compensation. A perusal of the above judgment would show that the appellants therein were tenants of the land and building forming part of large extent granted by the competent authority on behalf of the Government of North Western Provinces of British India in 1862 A.D. When this land was acquired, the LAO evaluated the value of the leasehold rights and apportioned 10 annas share in favour of the Government and 6 annas share in favour of the appellants. They sought a reference under Section 18(1) of the Act. The reference Court, however, awarded the entire compensation to the tenants. On appeal, the High Court restored the award of the LAO. The Supreme Court after examining the relevant law dealing with the apportionment of compensation under the Act between the owners of the land and permanent tenants/permanent lessees came to the conclusion that the apportionment in the ratio of 75:25 in favour of tenants and Government would be reasonable, and accordingly decreed the matter.

After perusing the judgment of the Supreme Court in **Brij Behari Sahai** (supra), this Court is not able to accept the submission of the learned Counsel for the petitioners. It is of no help to the petitioners. Before this Court, the case is not only covered by the Land Acquisition

Act, but also the Endowments Act. Indeed, the latter decides the rights of the tenants of Charitable Institutions. The limited right recognized under Section 82(2) of the Endowments Act provides for continued lease in favour of the tenants in spite of statutory cancellation under Section 82(1) of the Endowments Act and also a right to purchase the land at the prevailing market value. In this case, the lease, if any, was void as it is hit by Section 75 of the Endowments Act.

The Writ Petition is devoid of any merits and is accordingly dismissed. In the circumstances of the case, this Court is not inclined to make any order as to costs.

(V.V.S.RAO, J)

12.12.2007
vs

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[1] (2001) 7 SCC 708

[2] 2004 (1) SCC 641 = 2003 (10) SCALE 393 = 2004 (1) ALD 103 (SC)